

Appln No. 09/931,575  
Amdt date May 1, 2009  
Reply to Office action of February 20, 2009

**REMARKS/ARGUMENTS**

Claims 1-32 were pending in this application when last examined by the Examiner. Claims 11, 23, 24 and 31 have been amended. Claims 35-36 have been added. Claims 32-34 have been canceled. The amendments find full support in the original specification, claims, and drawings. No new matter has been added. In view of the above amendments and remarks that follow, reconsideration and an early indication of allowance of the now-pending claims 1-31 and 35-36 are respectfully requested.

Claims 11, 18, 31, 33, and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 11 and 31 have been amended. Applicant respectfully submits that the amendment of claims 11 and 31 now overcome the rejection under 35 U.S.C. 112, first paragraph. Support for amended claim 11 is found in the original claims, as well as in Applicant's specification, such as, for example, on page 6, lines 1-5 and on page 14, lines 15-22, of Applicant's specification. Support for amended claim 31 may be found in the original claims and drawings, as well as in Applicant's specification, such as, for example, on page 8, lines 15-17, of Applicant's specification.

Claim 18, as previously presented, finds support in the original claims, as well as in Applicant's specification, such as, for example, on page 6, lines 1-5 and page 14, lines 15-22, of Applicant's specification.

Claims 33-34 have been canceled. In light of the above amendment and remarks, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. 112, first paragraph.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, for failing to point out and distinctly claim the subject matter which the Applicant regards as the invention. Applicant respectfully submits that the amendments to claim 24 now overcome this rejection. Support for amended claim 24 is found in Applicant's specification, such as, for example, on page 6, lines 11-13.

Claims 1-4, 6-10, 17, 19, 21, 27-29, and 32 are rejected under U.S.C. 103(a) as being unpatentable over Swix et al. (U.S. Patent No. 6,718,551) in view of Grube (U.S. Patent No.

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6,026,366). Claims 5 and 20 are rejected as being unpatentable over Swix in view of Grube and further in view of Stewart et al. (U.S. Patent No. 6,414,635). Claims 30, 31, 33, and 34 are rejected as being unpatentable over Swix in view of Grube and further in view of Official Notice. Claims 14 and 22 are rejected as being unpatentable over Swix in view of Grube and further in view of Shoff et al. (Pub. No. 2001/0001160A1). Claims 11-13 and 18 are rejected as being unpatentable over Swix in view of Grube and further in view of Shoff et al. and further in view of Official Notice. Claim 23 is rejected as being unpatentable over Swix in view of Grube, further in view of Shoff, further in view of Official Notice, and further in view of Lobb et al. (U.S. Patent No. 6,699,127). Claim 24 is rejected as being unpatentable over Swix in view of Grube, further in view of Shoff, further in view of Official Notice, further in view of Lobb, and further in view of Treyz et al. (U.S. Patent No. 6,526,335). Claims 15-16 and 25-26 are rejected as being unpatentable over Swix in view of Grube, further in view of Barton et al. (U.S. Patent No. 6,233,389) and further in view of Official Notice. Applicant respectfully traverses these rejections.

Claim 1 recites, among other things, "during the broadcast of the video program, the server system transmitting to the plural types of local devices over the data communications network one or more messages to command the local devices to retrieve the content identified by the one or more messages from their respective local data stores to display the identified content on the plural types of local devices . . ." The Examiner contends that Swix teaches all of these elements.

Swix discloses on column 11, lines 34-57 that Swix's file server "instructs" the navigator in a set-top box to "retrieve from the buffer a certain advertisement and play that advertisement to the subscriber." Assuming, *arguendo*, that the Examiner is interpreting this language in Swix as disclosing the claimed "one or more messages," Swix still fails to teach or suggest that Swix's instructions are sent "during the broadcast of the video program."

Swix discloses two separate embodiments for providing customized advertisements to a set-top box: an "interactive session" embodiment; and a "broadcast" embodiment. The disclosure in Swix that the file server "instructs" the navigator in a set-top box to retrieve and

play advertisements is with reference to the "interactive session" embodiment. (See, Col. 10, line 20; Col. 12, line 60). In the "interactive session" embodiment, advertisements may be displayed in interactive menu screens, such as screen that are displayed in order to allow a viewer to select a pay-per-view program. (See, Col. 10, line 35 - Col. 11, line 2). Thus, any instruction that may be transmitted by the file server in the "interactive session" embodiment would not be "during the broadcast of the video program," as is required by claim 1.

The Examiner also relies on the disclosure on column 12, line 60 to column 13, line 9, of Swix, in contending that Swix teaches the limitation that "during the broadcast of the video program, the server system transmitting to the plural types of local devices over the data communications network one or more messages to command the local devices to retrieve the content identified by the one or more messages from their respective local data stores to display the identified content on the plural types of local devices . . ." The broadcast insertion described in this portion of Swix is for the "broadcast" environment. According to this "broadcast" environment, the broadcast server delivers a broadcast program in one channel, and targeted advertisements in other channels. (See, Col. 13, lines 9-22). When an advertisement insertion slot of the broadcast program comes up, the set-top box switches to a channel running an advertisement targeted for the individual subscriber of the set-top box. When the advertisement slot is over, the set-top box switches back to the broadcast program.

Swix teaches that a "q-tone" encoded into the broadcast transmission signals the set-top box of the beginning of the advertisement insertion slot. (Col. 13, lines 15-17). Although Swix discloses that "at q-tone 502, head end 110 communicates to each set-top box two items of tuning information," the tuning information is to cause the set-top box to switch to an appropriate advertisement channel, and is not a teaching of "a server system transmitting to the plural types of local devices over the data communications network one or more messages to command the local devices to retrieve the content identified by the one or more messages from their respective local data stores to display the identified content on the plural types of local devices . . ." as is required by claim 1.

If the Examiner is attempting to combine the teachings of the "interactive session" embodiment in Swix with the teachings of the "broadcast" embodiment to sustain the rejection, Applicant respectfully submits that it is improper for the Examiner to do so because the "interactive session" embodiment is separate and distinct from the "broadcast" embodiment. It is well established that it is improper for an Examiner to pick and choose various portions of a disclosure, not directly related to each other, in order to satisfy the limitations of a claim. (See, *Net MoneyIN Inc. v. VeriSign Inc.*, 88 USPQ2d 1751, 1757-1760 (Fed. Cir. 2008); *Ex parte Beuther*, 71 USPQ2d 1313, 1316 (U.S. Pat. Bd. of Appeals, 2003)). Accordingly, claim 1 is in condition for allowance.

Independent claim 27 includes limitations similar to the limitations of claim 1 which make claim 1 allowable. Accordingly, claim 27 is also in condition for allowance.

Claims 2-26 and 28-31 are also in condition for allowance because they depend on an allowable base claim and for the additional limitations that they contain.

Specifically with respect to the rejection of claim 31, claim 31 has now been amended to recite that "the plural types of local devices include a personal computer, a set-top box, a net-top device, and a wireless device, wherein the one or more messages are concurrently transmitted by the server system to each of the plural types of local devices." (Emphasis added).

As described in the Background section of Applicant's application, one problem existing in the prior art is that although PCs, set-tops, and net-tops are used for interactive television display, "[e]ach of these systems is designed to act as a closed system; each cable headend, satellite broadcast system, etc. uses its own hardware and software within the system . . . , and because all of the systems are closed, no system allows them all to be connected and provide real-time interactivity among all participants." (Background, page 1, lines 12-22). The invention as claimed in claim 31 allows for a system that "serves as a centralized system for connect[ing] all such external devices. Furthermore, such a system can connect closed systems, such as cable headends, and can allow different such systems to act as one cohesive system." Thus, although it may be well known to use PCs, set-tops, net-tops, and a wireless device in separate closed systems, it is not well known to use these devices in a single system "wherein the one or more

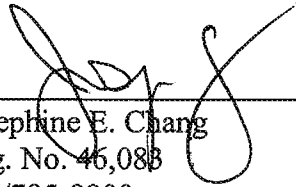
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messages are concurrently transmitted by the server system to each of the plural types of local devices." Accordingly, claim 31 is also in condition for allowance for the additional limitations that it contains.

Claims 35-36 are new in this application. Claims 35-36 find support in various portions of Applicant's original application. For example, claim 35 finds support on page 3, lines 7-8 and page 10, lines 15-25, of Applicant's specification. Claim 36 finds support on page 8, lines 6-7, and page 11, lines 20-22 of Applicant's specification. Claims 35 and 36 are in condition for allowance because they depend on an allowable base claim and for the additional limitations that they contain.

In view of the above amendments and remarks, reconsideration and an early indication of allowance of the now-pending claims 1-31 and 35-36 are respectfully requested.

Respectfully submitted,  
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